IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 14 OF 2006
IN
SECOND APPEAL NO. 95 OF 2005

GIRIDHAR DEUSEKAR ... Petitioner
Versus
RAMAKANT KALANGUTKAR AND ANR., ... Respondents

Mr. Valmiki Menezes, Advocate for the petitioner.

Mr. A. D. Bhobe, Advocate for the respondents No.1 and 2.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza, Advocate for the respondents No.3, 4 and 5.

Coram:- R. S. MOHITE, J.

Date:- 12th July, 2007

P.C.

This is a contempt petition filed by the original petitioner which is misconceived. It appears that in the plaintiff's suit, an order is passed by the Civil Judge, Sr. Division, in the following terms :

> "The plaintiff is permitted to construct the suit compound wall after leaving the one metre wide access on the western side of the suit property. The defendants are restrained from interfering with the construction of the suit compound wall or the suit property enclosed by the suit compound wall. The defendants shall pay the costs.

2. Being aggrieved by the order relating to the direction to keep one meter wide access on the western side of the suit property, the original plaintiff filed Regular Civil Appeal No.22/03 before the District

Court, Panaji. The said appeal was allowed by Judgment and Order dated 17.6.05. The original defendants then filed a second appeal which is pending in this Court. At the interim stage, after hearing both sides, this Court on 1.9.05 passed the following interim order:

> "Heard. During the pendency of the Second Appeal, the operation of the Judgment and Decree passed by the District Court, Panaji on 17.6.2005 shall remain stayed. In other words, the direction given by the trial Court in the Judgment and Decree dated 1.12.2003 shall remain operative."

3. On a plain reading of the said orders, it is clear that there was no prohibitory injunction by the trial Court concerning the manner of use of the pathway. The grievance made in the contempt petition is that the said pathway has been asphalted by the original defendants with the help of officials from the Village Panchayat and the police. In the absence of any prohibitory order, the contempt petition would not lie and the same is, therefore, dismissed. It is, however, made clear that it would be open for the present petitioner who is the respondent in the second appeal to seek such a relief as he may be entitled to obtain in the second appeal. It is further made clear that if any such application is made for mandatory injunction, the same will be decided on its own merits. Petition disposed off.

R. S. MOHITE, J.

ssm.